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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 167

BANCO CREDITO Y AHORRO PONCENO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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1. OPINIONS DELIVERED BY THE COURT AND BOARD

This petition for a writ of certiorari seeks review of a decision of the United States Court of Appeals for the First Circuit delivered on March 7, 1968 in *Banco Credito y Ahorro Ponceno* v. *NLRB,* F.2d (1st Cir. No. 7001) (not yet officially reported) (JRA 377). This decision enforced an order of the National Labor Relations Board (herein referred to as the Board) rendered on September 12, 1967 in *Banco Credito y Ahorro Ponceno,* 167 NLRB No. 52 (JRA

329). This Board decision, in turn, rested on appropriate unit findings made by the Board on September 30, 1966 in *Banco Credito y Ahorro Ponceno,* 160 NLRB No. 119 (JRA 275). The Court decision and two Board decisions are reprinted as appendices "A", "B" and "C" respectively to this petition.

2. JURISDICTION

The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1).

3. QUESTIONS PRESENTED

This petition for certiorari presents the following two inter-related questions:

1. Whether the National Labor Relations Board, in conflict with the Court's decision in *NLRB* v. *Metropolitan Life Insurance Co.,* 380 U.S. 438, failed to articulate substantial reasons for its precedent-setting decision, on the one hand that a single branch of a highly centralized multiple branch bank in Puerto Rico is appropriate for bargaining, and on the other hand that a thirteen branch unit of the same bank is also appropriate for bargaining where the only common element in the two inconsistent units is the extent of union organization.

2. Whether the Board acted in contravention of Section 9(c)(5) of the Statute, which forbids extent-of-organization units, when the Board found both a single branch unit and a thirteen branch unit appropriate for a highly centralized banking operation in Puerto Rico with thirty-one branches in circumstances where:

(1) all of the factors normally considered by the Board in unit cases—centralization and integration,

central control of labor policy, community of employee interest, interchange, geographical contiguity and lack of local autonomy—favored an overall unit; and

(2) the units found appropriate coincided with the extent of organization and the unit requests of the unions seeking representation rights in such units.

4. IMPORTANCE OF QUESTIONS PRESENTED

This is one of only two reported cases since Taft-Hartley in which the Board has had occasion to consider appropriate bargaining units in the banking industry. Union organization came late in this industry, but now appears to be accelerating in tempo so that it may be expected that this case will have general significance throughout the nation as a precedent-establishing decision shaping the pattern of employee representation in this important industry.

Banking is, to a significant degree, the life blood of trade and commerce, and its importance to the economic health of the nation and the preservation of a healthy, viable economy can hardly be overstated. Because of its nature, banking has unique characteristics of organization and operation which distinguish it sharply from other industries such as manufacturing, retailing, transportation, and even insurance. For this reason, patterns of bargaining in other industries afford little precedent to guide the establishment of bargaining units. It is important to the continued efficiency of the banking systems of the nation that bargaining relationships and employer-employee relations be established on a basis that is compatible with the unique characteristics of the industry and will foster stability of labor relations as well as efficiency of service to the public.

Banks are, by the nature of their services and the necessity for careful controls of banking practices, more highly centralized and controlled than manufacturing or other businesses. The record in this case, largely ignored or passed over by the Board and Court, affords a typical picture of the nature of banking operations and the high degree of centralization and integration of a banking operation. Branches are established in various locations to serve the convenience of the public. But every activity of the branches is closely controlled from the central departments. This centralization of control relates not merely to banking services but also to personnel and to the determination and administration of labor relations programs and policies.

There is a much higher degree of centralization and integration in banking operations than exists in chain stores or even in public utility systems. Yet, the Board has long recognized that the most appropriate unit in public utility systems is a system-wide unit.

The Board's recent reversal of long standing precedent in unit determinations in the insurance industry and its penchant for fragmenting units in that industry, has led to confusion, controversy and instability of labor relations. The Court showed its concern for these trends in the *Metropolitan* case, *supra,* when it remanded the case for further consideration and articulation of unit rationale and standards. The present case, and the action of the Board in finding appropriate fragmented and inconsistent units, presages a similar approach to the banking industry, and the same unstabilizing consequences may reasonably be predicted.

It is recognized that the Board has broad discretion to determine bargaining units, but as the Court emphasized in *Metropolitan,* this discretion has definite and definitive limits. It was the predisposition of the Board to fragmentize employer administrative organization to satisfy a natural union preference for extent of organization units which led the Congress to enact Section 9(c)(5) of the Act in 1947, and caused the Court to remand the *Metropolitan* case.

Despite the clear warning signal given it by that decision, the Board now moves to grant what are essentially extent of organization units in the banking industry. In a pre-Taft-Hartley case arising in Puerto Rico, *Banco Popular de Puerto Rico,* 61 NLRB 676 (1945), the Board, not then restricted by Section 9(c)(5), found a single branch appropriate, as it has done here, although conceding the highly centralized and integrated nature of the system. The single branch unit was admittedly based on extent of union organization, and the Board stated:

> "This finding does not preclude a later determination in favor of a larger unit in the event of an extension of organization to include employees in all the island" (p. 679).

Despite the supervening enactment of Section 9(c)(5) the Board has here followed, *sub silentio,* the *Banco Popular* precedent and established three extent of organization units. Apart from extent of organization, there is no other common thread or rational basis for granting the request of the unions to establish in the same proceeding two single branch units and a thirteen branch unit. No one of these units conformed to any of the three administrative territories of the bank, or

has any other distinguishing characteristic to mark it as appropriate for bargaining. The Board in granting the unions' request for these fragmented units ignored its own standard criteria and failed to develop criteria tailored to the unique character of the banking industry. Stripped of meaningless verbiage, the Board has beyond question granted extent of organization units in contravention of Section 9(c)(5).

The Court of Appeals, rather surprisingly, has chosen not to question the Board's contravention of the Statute. The precedent-setting character of these unit findings in a critical industry justifies review by the Court.

5. STATUTE INVOLVED

The statute involved is Section 9 of the National Labor Relations Act, 29 U.S.C. § 159, which is set out in full in Appendix D to this petition. Of particular relevance in this proceeding is subsection (c)(5) of Section 9 which provides:

> "In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling."

6. STATEMENT OF THE CASE

The Petitioner is a bank with its home office, centralized departments and thirty-one branch offices in Puerto Rico.[1] On March 9, 1966 the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3,

[1] The only office outside of Puerto Rico is a bond office in New York City.

AFL-CIO (herein referred to as the Boilermakers) filed a representation petition under Section 9 of the Act with the Board to represent employees in a thirteen branch unit of bank offices located in what the Board referred to as "the San Juan metropolitan area." This grouping did not coincide with any administrative area or subdivision of the bank. On April 14, 1966 another organization, called Union de Empleados de Oficinas de Bancos y Financieras, Afiliada à Office and Professional Employees International Union, AFL-CIO (herein referred to as UEOB), filed two representation petitions with the Board, one seeking to represent employees at the Yauco branch and another seeking to represent employees at the Arecibo branch. Boilermakers intervened in the UEOB single branch petitions. A different labor organization, the Office and Professional Employees International Union, AFL-CIO (herein called Office Employees) intervened in the Boilermakers'[2] petition involving the thirteen branches of the bank. The cases involving all three petitions were consolidated for Board decision.

In a prior proceeding in 1962, a different labor organization filed a representation petition and executed a consent agreement with the bank to hold an election in a unit consisting of all operations of the Bank in Puerto Rico (JRA 9,276). This agreement had the approval of the Board's Regional Director.

The Board and Court made the following findings of fact concerning Petitioner's operations:

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[2] The Office Employees at first took the same position on the scope of the unit as the Employer—that only an all-branch unit of the Bank was appropriate (JRA 7). Later this union took the position that either an island-wide or a thirteen branch unit was appropriate (JRA 86).

1. "The Employer's policies pertaining to operations, administration and labor relations for all of its branch offices are formulated centrally by top management" (JRA 276-277).

2. "The Bank's Board of Directors and Operations Committee determine policy including labor relations policy. Services are administered from centralized departments most of which are in San Juan." (JRA 378).

3. "The Employer's Finance, Personnel, and Publicity Departments are *housed* in its main office in San Juan; general record keeping, electronic data processing, and the consumer loans department are located in the centralized Stop 17 office; and the Comptroller's Office, including Accounting and Reports, Bookkeeping, Purchases and Disbursements, is presently located in Ponce, a distance of approximately 70 miles from San Juan" (JRA 277).

4. "Services are administered from centralized departments, most of which are in San Juan." (JRA 378).

5. "Centralized supervision is accomplished by the administrative subdivision of the island into three territories, with area supervisors reporting through the General Supervisor of branch offices to the Assistant Executive Vice-President." (JRA 277).

6. "Such centralization is required in order to ascertain the Bank's daily cash position inasmuch as the loan capacity of each branch office is affected by the Bank's overall margin requirements." (JRA 277).

7. "Employees are under a bank-wide classification system with uniform salaries, hours, and fringe benefits" (JRA 378).

Geographically, the Commonwealth of Puerto Rico is approximately thirty-five miles wide and one hundred miles long (JRA 202). The nearest branch office to the Arecibo branch office involved in this case is sixteen miles, and the central office in San Juan is less than forty miles from the Arecibo branch—an hour's drive (JRA 379).

The Board and Court found that there were 206[3] transfers of employees among the 31 branches in a period of the last 28 months prior to the hearing (JRA 278, 379). Two of these involved transfers from the Arecibo branch to other branches (JRA 213-223).

The nature of the banking industry lends itself in a unique manner to the high degree of centralization and integration of operations. Thus, for example, the lending capacity of the bank depends on its overall cash position, which changes on a day-to-day basis (JRA 132-133). Only by an unusually high degree of centralization can the proper controls be established for determining the overall cash position of the bank at any given time (JRA 277).

While reciting these and other facts pointing to an overall unit, the Board purported to find justification for single branch units (as well as a 13 branch unit) in the admittedly routine and limited authority of the local branch manager to recommend hiring, firing, and disciplinary measures, resolving minor grievances, authorizing overtime and scheduling vacations, all restricted to action within the limits of central policy. The Board also found as a makeweight, and based on no record evidence, that while distances in Puerto Rico

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[3] 208 is the correct number.

are not great, "inadequate roads" render many offices remote from one another.

Based on these findings, and the finding that "no labor organization is seeking the Employer's overall operations," the Board found two single branches and one thirteen branch grouping to constitute appropriate units.

The Court accepted the Board's findings.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1.

The Finding of the Board That a Single Branch of a Thirty-One Branch Bank Located in Puerto Rico Is an Appropriate Unit for Bargaining Conflicts With the Decision of This Court in NLRB v. Metropolitan Life Ins. Co., 380 U.S. 438, in That (1) It Fails To Articulate Reasons Why Such Unit Is Appropriate in View of the Admitted High Degree of Centralization, Integration of the Bank's Operations and Administration, the Bank-Wide Uniformity of Wages, Hours, and Other Conditions of Employment and the Lack of Local Branch Autonomy, and (2) It Fails To Articulate Reasons Why, in the Same Case, the Board Inconsistently Found Appropriate a Thirteen Branch Unit of the Same Bank in Puerto Rico Over the Objection of the Bank That the Only Appropriate Unit Consisted of All Employees of All Branches of the Bank

This Court in *NLRB* v. *Metropolitan Life Ins. Co.*, 380 U.S. 438 (1965), reviewed the Board's appropriate unit policy in the insurance industry. There the record showed that in recent cases the Board had found various different types of units appropriate in that

industry.[4] The case itself dealt with a Board finding that a single district office in the State of Rhode Island, which had eight district offices, was appropriate. The Court found that:

> "[D]ue to the Board's lack of articulated reasons for the decisions in and distinctions among these cases, the Board's action here cannot properly be reviewed. When the Board so exercises the discretion given to it by Congress, it must disclose the basis of the order and 'give clear indication that it has exercised the discretion with which Congress has empowered it' " 380 U.S. at 442-43.

The present case is one of the first reported representation cases involving the scope of the appropriate unit for bargaining in the banking industry since the passage of the Taft-Hartley Act.[5] Instead, however, of providing the guidance that was required in this relatively newly organized industry, the decision presages an irrational pattern of gerry-mandered union representation in this industry, based primarily on the extent to which the union has organized the employees of the bank.

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[4] In one case the Board had certified as appropriate a unit consisting of two of the company's three district offices in a state; in another the unit was all district offices within a city limits; in another case the unit was all district offices within a metropolitan area including suburbs; in another case the unit certified was a single district office together with two detached suboffices 284 and 120 miles distant from the district office.

[5] In Central Valley Nat. Bank, 154 NLRB 995 (1965), the only other reported representation case dealing directly with the banking industry subsequent to 1947, the Board found appropriate a unit limited to a bank's supply department. The issue of a branch, multi-branch or bank-wide unit of the bank was not involved.

Here, in the same decision, the Board has found appropriate for bargaining two single branches of the bank and a thirteen branch unit of the same bank. No reasons are articulated for finding a single branch appropriate or why in the same case, involving the same bank, on the same geographically compact island of Puerto Rico, a thirteen branch unit is also found appropriate.

As shown in the statement of the case, *supra,* the admitted and undisputed facts in the record indicate clearly, under Board and Court precedent, that only an all-branch unit of the bank's employees is appropriate. These facts include:

1. Central organization and administration of the bank as a whole by the Board of Directors and Executive Committee and by a system of administrative subdivision of the bank into three areas, with area supervisors reporting through the general supervisor of branch offices to the Assistant Executive Vice-President.

2. Centralized origin and administration of policies concerning operations and labor relations.

3. Centralized finance, personnel, publicity, comptroller, accounting and reports, bookkeeping, procurement and disbursements departments of the bank. Centralized record keeping, data processing and FHA, construction and consumer loans departments.

4. Uniform bank-wide job classification system.

5. Uniform system of salaries, hours, and fringe benefits.

6. Transfers between the branches totalling 208 over a 28 month period.

7. Unit restricted to the relatively small and compact geographical area of Puerto Rico.

8. Lack of substantial autonomous authority of the branch managers and the substantial restrictions on their discretion in employee relations by reasons of the highly centralized origin and administration of labor relations policy.

While case comparisons are notoriously difficult to make in representation cases, and there are no Board or Court cases subsequent to 1947 dealing with this type of representation problem in the banking industry, the Courts have, in the past refused to enforce Board orders requiring bargaining in fragmented units in the face of a similar showing of centralization and integration of overall operations within a relatively small area. See, e.g., *NLRB* v. *Purity Food Stores,* 354 F. 2d 926 (1st Cir. 1965) (reversing a finding that a single supermarket of a seven-market chain in an area north of Boston was an appropriate unit on the ground that "it would be difficult to find a more integrated operation or less difference among employees"); *NLRB* v. *Purity Food Stores, Inc.,* 376 F. 2d 497 (1st Cir. 1967) (again setting aside a Board order entered upon remand of the previous *Purity* case finding that the single store was an appropriate unit on the basis that "the 'independence' of the stores in the Purity chain amounts to no more than a few miles of physical separation and the consequent division of a few ministerial responsibilities. This is far from enough."); *NLRB* v. *Frisch's Big Boy Ill-Mar, Inc.,* 356 F. 2d 895 (7th Cir. 1966) (settng aside Board order requiring bargaining in one restaurant of a ten-restaurant chain in the Indianapolis, Indiana area on the basis that the restaurants "are as much alike in this respect [labor

relations] as peas in a pod" and that "the decisions left to the [individual] restaurant managers do not involve any significant element of judgment as to employment relations".)

The Board's attempted rationalization for its fragmentation of the Arecibo branch of the bank as an appropriate unit is a collection of non sequiturs and trivia. After first reciting the evidence summarized immediately above demonstrating conclusively that the sole appropriate unit was an employer-wide one, the Board, with Court approval, relied on the following in finding the Arecibo branch an appropriate unit:

1. *Supervision of employees on a day-to-day basis by the branch managers.* It is nothing more than a truism that if there are thirty-one branch offices, there must be someone with supervisory authority in each branch. The real question, which the Board and Court do not answer, is the amount of authority reposed in and exercised by the branch manager and the extent to which his authority is circumscribed by centrally devised and administered policies, particularly labor relations policies. In purely conclusionary terms the Board characterized the branch manager's authority as "substantial." But this conclusion is at odds with the facts the Board and Court recite concerning the unusually high degree of centralization and integration of operations and administration of this bank. The branch managers' recommendations with respect to firing and discipline of branch employees are limited to mere recommendation. There was evidence, as found by the Court, that the branch managers' recommendations in respect to firing and discipline were not always followed. The Court apparently believed that actual rejection of branch managers' recommendations three

or four times a year was too infrequent to demonstrate the circumscribed nature of the branch managers' authority. The opposite inference, however, is the correct one. The bank hires branch managers to carry out its admittedly centrally devised and administered policies. It would demonstrate the bank's lack of central control and authority over labor and personnel policies, as well as its lack of judgment in choosing branch managers, if there were a higher incidence of rejections of branch managers' recommendations on these minor disciplinary matters.

The significant consideration, however, is that policy-making authority over labor relations and personnel matters is centralized and the branch managers have no authority in this area. The responsibility to make recommendations on hiring, firing and discipline is a routine management function normally delegated to intermediate or low level supervision.

The authority of the branch managers in authorizing overtime, scheduling of vacations within limitations of central policy, explanation of company policies in answer to specific employee questions and resolving "minor employee grievances" are also routine matters that a functionary can perform with no real policy-making authority *vis à vis* the branch employees. These matters could as well be handled by a payroll clerk. As the Court said in the *Frisch* case, *supra:*

> "It is obvious to us that none of the store managers will be deciding questions affecting the employees in the context of collective bargaining."

2. *Difference among the individual branches.* The Board purported to find a single Arecibo branch unit appropriate because of "marked differences among the

individual branch offices . . ." (JRA 277). The only "marked" difference noted, however, was an alleged observance of "local holy days" (JRA 278). The only evidence on which this was based was a belief by a single witness that these were one or two towns where the bank might reduce its staff to a skeleton crew in observance of a patron saint's day (JRA 197-198). This slender reed was too much for the Court, which pointedly did not rest its decision on this purported factor. Such reliance is ludicrous when the undisputed record shows a complete uniformity in rates of pay, employee benefits, hours and all other terms and conditions of employment.

3. *Alleged minimal transfers of employees from branch to branch.* The record disclosed that there were 208 transfers from one branch to another during the period from January 1, 1964 to the date of the hearing in April of 1966. It is difficult to understand how such a record can be characterized as "minimal" (JRA 278). This is particularly true of the banking industry where there is a high degree of employment stability. While not adopting the Board's theory that the record showed that there was a "minimal" incidence of transfers, the Court found significance in the fact that only two of the transfers involved the Arecibo branch. Since, however, there are 31 branches, the average transfer rate per branch was only 6.64 per branch. The difference is obviously *de minimis* and wholly unworthy of a basis on which an appropriate unit finding can validly rest.

4. *The alleged remoteness of one branch from another.* The Board found that "inadequate roads render many such offices remote from one another" (JRA

278). There is not a shred of evidence in the record to support this conclusion. It is all the more surprising in view of the obvious geographical fact that can be obtained by looking at any ordinary map, that the island is only some 35 by 100 miles in total area and that it is connected by a highly efficient network of highways. The Court endorsed the Board's conclusion of remoteness, and noted "the Arecibo branch is almost forty miles from San Juan and is reached by automobile in one to one and a quarter hours." The same, of course, is true of the automobile ride from Washington, D. C. to Annapolis, Maryland, or practically any other two urban points forty miles between each other in the continental United States. That significance is sought to be attached to such trivial matters discloses the thinness of the argument.

The error of the Board's designation of the Arecibo unit as the appropriate unit for bargaining is highlighted by the internally inconsistent ruling in the same case that a thirteen branch unit of the same bank is also an appropriate unit for bargaining.[6] As in the *Metropolitan Life Ins. Co.* case, *supra,* no reasons were articulated by the Board or the Court for this inconsistent determination of appropriate units for the bank's employees in other parts of Puerto Rico. The sole rationalization used by the Board in an attempt to distinguish the two situations is that the thirteen branch units sought by the union was within what the Board called "the metropolitan area" of San Juan and that such branches:

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[6] While the appropriateness of the thirteen branch unit was not involved in the appeal, the inconsistent unit finding is a relevant consideration.

> "constitute a clearly defined, geographically coherent grouping sufficiently inclusive and compact to make collective bargaining in a single unit feasible." (JRA 278)

Geographical coherence is a meaningless abstraction. Any area which has bounds or limits is "geographically coherent". The term "sufficiently inclusive and compact" is a relative term at best. When applied to a portion of an already compact and wholly inclusive area that comprises Puerto Rico as a whole, the term has little or no meaning. The Court additionally believed that it was relevant for purposes of showing why, in the same case, a single branch and a thirteen branch unit could be found as the appropriate units of this bank's operations the fact that approximately 57% of the employee transfers between January 1, 1964 and May of 1966 were between branch offices within the thirteen branch unit sought by the unions. The significance of this fact is almost wholly muted by the fact that the thirteen branches sought as a unit in the unions' petition constitute 42% of the bank's thirty-one branches and that approximately 60% of the bank's total employees are employed at the thirteen branches in question.

Thus, as was true in the *Metropolitan* case, there is in this case a "lack of articulated reasons for the decisions in and distinctions among these cases;" or, more pertinently, a lack of articulated reasons for the decision to make the Arecibo branch a separate appropriate unit and to distinguish the inconsistent ruling in the same case that a thirteen branch unit of the same bank was appropriate.

2.

The Controlling Weight Given to the Unions' Extent of Organization by the Board, in Determining the Appropriateness of the Unit, Constitutes a Decision of an Important Question of Federal Law, Which Has Not Been, But Should Be Settled By This Court

Section 9(c)(5) of the Act constitutes an express Congressional limitation on the Board's powers in making appropriate unit findings in representation cases. It provides:

> "In determining whether a unit is appropriate for the purposes specified in subsecton (b) the extent to which the employees have organized shall not be controlling."

This section of the Act was added in 1947. The legislative history clearly shows its origin and purpose:

> "Section 9(f)(3) [subsequently enacted as 9(c)(5)] strikes at a practice of the Board by which it has set up as units appropriate for bargaining whatever group or groups the petitioning union has organized at the time. Sometimes, but not always, the Board pretends to find reasons other than the extent to which the employees have organized as grounds for holding such units to be appropriate. (Matter of *New England Spun Silk Co.* 11 NLRB 852 (1939); Matter of *Botany Worsted Mills,* 27 NLRB 687 (1940). While the Board may take into consideration the extent to which employees have organized, this evidence should have little weight, and, as section 9(f)(3) provides, is not to be controlling" H. Rept. No. 245 on H.R. 3020, 80th Cong. 2nd Sess. 1947, p. 37.

In this case the units found appropriate by the Board conform precisely to the units as petitioned for by the unions, which naturally, is the indicator of the extent

to which the unions had organized the employees in question. As shown in the argument under the first reason for granting the writ, the Board articulated no valid reasons for determining as appropriate the single branch of the Bank of Arecibo and no reason distinguishing the contradictory ruling in the same case that a thirteen branch unit of the same bank was also appropriate. Also, as shown above, the Board's attempted rationalizations for the results it reached are so devoid of merit that they cannot be termed "articulated reasons."

This case, therefore, presents to the Court the important question of federal law, which the Court found it unnecessary to reach in the *Metropolitan* case. In that case the Court of Appeals had found that the Board violated Section 9(c)(5) of the Act by its finding that a single branch office of the Company was the appropriate unit, whereas in six other recent cases, all involving the same employer, the Board had found other types of units appropriate (see footnote 4, *supra*), and in every case the unit found appropriate was the unit the union had petitioned for. The Court of Appeals had concluded that the Board had given controlling weight to extent of organization in violation of Section 9(c)(5) of the Act. *NLRB* v. *Metropolitan Life Ins. Co.*, 327 F. 2d 906 (1st Cir. 1964). The issue this Court deemed sufficiently important as a matter of federal law to warrant the exercise of its certiorari power to review was the issue of whether the Board's action had violated Section 9(c)(5). Since it refused to enforce the Board's order on the middle ground that the Board had failed to articulate reasons for its decision, the Court found it unnecessary to reach the question or issue on which certiorari was granted. That

issue is squarely presented by the circumstances of this case.

Here the make-weight and trivial rationalizations put forward by the Board and Court in support of the decision that the Arecibo branch should constitute a separate appropriate unit of this highly and necessarily centralized and integrated banking operation presents the perfect record for demonstration that there is no factor, other than the unions' wishes and their extent of organization, that could possibly lead to the gerrymandered result that prevailed in this case.

This is all the more unfortunate since it is the Board's first attempt to deal with basic scope-of-appropriate-unit representation problems in the banking industry since the Taft-Hartley Act was passed in 1947. It presages a period of labor relations instability in this industry similar to the instability in the insurance industry that ultimately led this Court to take the *Metropolitan* case. The organization of a single bank, with its demonstrated need for centralization and integration, with its uniform wages, hours, and other terms and conditions of employment, and within the close geographical boundaries of Puerto Rico on a piecemeal basis can only serve to disrupt the operations of the bank and keep the question of representation throughout the bank's branches in a perpetual state of uncertainty and confusion, and subject to periodic raiding by outside labor organizations. Under the Board and Court ruling, the unit lines in such organizational disputes would be constantly shifting, depending on the desires of the unions involved and the extent of their organization. The spectre of a dozen or more different labor organizations each representing various branches or groupings of branches of the bank in Puerto Rico,

each seeking its own different bargaining program and different collective bargaining agreements from an employer bank that peculiarly requires centralization and standardization in all aspects of the employment relationship in order to maintain efficient and accurate service to the public cannot be lightly dismissed. It is squarely at odds with the overall policy of the Act to "eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining." Such a fragmentation of the representation of the Bank's employees in these circumstances makes effective collective bargaining unfeasible, if not impossible.

As the legislators who wrote Section 9(c)(5) into the Act realized, the Board has rarely, if ever, admitted that it has given controlling weight to the extent of the unions' organization of employees. As stated in the House Report quoted above, the Board on occasion "pretends to find reasons other than the extent to which the employees have organized as ground for holding such units to be appropriate." And this Court warned in the *Metropolitan Life Ins. Co.* case "that the enforcing court should not overlook or ignore an evasion of the § 9(c)(5) command" 380 U.S. at 442.

Surely the present case presents a dramatic "evasion" of Section 9(c)(5) through its "pretense" of finding "reasons" other than extent of organization as a ground for holding the unit in question to be appropriate for bargaining.

CONCLUSION

For the above stated reasons Petitioner respectfully requests that this Court grant the petition for certiorari to review the decision of the United States Court of Appeals for the First Circuit in the instant case.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7001

BANCO CREDITO Y AHORRO PONCENO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

[167 N.L.R.B. No. 52]

Before ALDRICH, *Chief Judge,* McENTEE and COFFIN, *Circuit Judges.*

William Lespier and Miguel Palou Sabater, with whom Cohen & Lespier was on brief, for petitioner.

Norton J. Come, Assistant General Counsel, with whom Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Nancy M. Sherman and Leon M. Kestenbaum, Attorneys, were on brief, for respondent.

March 7, 1968

PER CURIAM. The petitioner, Banco Credito y Ahorro Ponceno (Bank), of Puerto Rico, seeks to set aside a National Labor Relations Board order based on a finding

that the Bank had violated sections 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, in refusing to recognize and bargain with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO (Union). The Board seeks to enforce the same order.

The Bank's major contention is that it was not obligated to bargain with the Union, even after election and certification, because the Board had improperly designated the employees of one of its 29 branches—Arecibo—as an appropriate bargaining unit. The Bank argues that the evidence of its island-wide, integrated, centrally controlled system, with uniform policies and standards and corresponding lack of authority in local branch managers precluded the Board from making substantiated findings that one branch was an appropriate unit. It also charges the Board with failure to articulate its rationale and with inconsistency in designating, following a consolidated representation hearing, 13 branch offices in the San Juan metropolitan area as another appropriate unit.

Despite the length of briefs and record, the relevant facts can be briefly summarized. The Bank's Board of Directors and Operations Committee determine policy including labor relations policy. Services are administered from centralized departments, most of which are in San Juan. Branches must make daily reports of cash positions. Check clearance is of course done centrally. Branch managers have no decision-making authority over FHA and construction loans and must adhere to consumer loan limits set by the Board and, in the case of employee loans, to $1,000. Employees are under a bank-wide classification system, with uniform salaries, hours, and fringe benefits.

Branch managers, on the other hand, supervise employees on a day-to-day basis, recommend employees for pay increases, promotions, transfers, discipline, and discharge.

While this authority is described as that of recommending, a bank witness had heard of only three or four cases in one year where the branch manager's recommendations were not followed. Branch managers have the responsibilities of explaining new policies to employees, assigning overtime work, establishing vacation schedules, and resolving minor employee grievances.

The Arecibo branch is almost forty miles from San Juan and is reached by automobile in one to one and a quarter hours. It is sixteen miles from the nearest branch office. Of 206 employee transfers in two and one half years, only two involved Arecibo. Unlike some other branches, Arecibo does its own record-keeping and posting.

The Bank, on these facts and at this appellate stage, faces a most difficult task. It cannot succeed only by demonstrating that a system-wide unit would be appropriate but must also show that a branch unit is clearly not appropriate. *Mueller Brass Co.* v. *NLRB,* 180 F.2d 402 (D.C. Cir. 1950). The broad discretion lodged in the Board, the limited scope of review, the Act's policy of assuring freedom to employees in exercising their right to organize all add to the task. In this case we cannot say that the Board's decision was not supported by evidence, misconceived the law, was an abuse of its discretion, or was inadequately articulated. *See General Instrument Corp.* v. *NLRB,* 319 F.2d 420, 422 (4th Cir. 1963), *cert. denied,* 375 U.S. 966 (1964).

The real albeit limited authority of the branch manager as to matters of immediate importance to employees, the relative remoteness of the branch, the almost complete absence of interchange of personnel between Arecibo and other parts of the system together justify the Board's designation of the Arecibo unit.

Our own decision in *NLRB* v. *Purity Food Stores, Inc.,* 376 F.2d 497 (1st Cir.), *cert. denied,* 389 U.S. 959 (1967), does not stand for the proposition that central policy-

making in a chain precludes a single unit determination. The facts before us relating to the management and labor situation in the Arecibo branch are more comparable to those in such cases as *NLRB* v. *Sun Drug Co.*, 359 F.2d 408 (3d Cir. 1966); *NLRB* v. *Merner Lumber & Hardware Co.*, 345 F.2d 770 (9th Cir. 1965); *NLRB* v. *Winn-Dixie Stores, Inc.*, 341 F.2d 750 (6th Cir. 1965); *Harris Langenberg Hat Co.* v. *NLRB*, 216 F.2d 146 (8th Cir. 1954); and *NLRB* v. *Stanolind Oil Co.*, 208 F.2d 239 (10th Cir. 1953), none of which was reckoned with in the Bank's briefs.

That the Board saw fit to designate 13 branches in the San Juan metropolitan area as a "clearly defined, geographically coherent grouping sufficiently inclusive and compact to make collective bargaining in a single unit feasible" does not manifest any inconsistency with its Arecibo decision. *See NLRB* v. *Frisch's Big Boy, Inc.*, 356 F.2d 895, 896 n. 3 (7th Cir. 1966). We note that over half of the Bank's total employee transfers over the period we have referred to occurred within this area.

The Bank also challenged the election which was held subsequent to the designation of the Arecibo unit on the ground that the Board agent conducting the election entered the Bank on the day of election in the company of two Union representatives, and asked both the officials of the Bank and representatives of the Union to leave the premises during the election. The Bank also complains that it was entitled to a hearing in the unfair labor practice proceeding because it wished to challenge the authenticity of letters purporting to state why it was doing what it obviously did, i.e., refuse to bargain. These arguments we pass as being the by-products of understandable, if unrestrained, advocacy.

Petition to review and set aside the Board's order is denied and said order may be enforced.

APPENDIX "B"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 24-CA-2347

BANCO CREDITO Y AHORRO PONCENO

and

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, DISTRICT LODGE 3 OF PUERTO RICO, AFL-CIO

Decision and Order

Upon a charge filed by International Brotherhood of Boilmakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO, herein called the Union, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 24, issued a complaint dated May 18, 1967, against Banco Credito y Ahorro Ponceno, herein called Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and of the complaint and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges, in substance, that on February 1, 1967, the Regional Director for Region 24 certified the Union as the collective-bargaining agent of the Respondent's employees in the unit found appropriate,[1] which action was subsequently confirmed by the Board, and that, since on or about March 31, 1967, the Respondent has failed or refused to

[1] Supplemental Decision and Certification of Representative issued February 1, 1967, in Case No. 24-RC-2882 (not published in NLRB volumes.)

recognize and bargain with the Union as the exclusive bargaining agent of the employees at the Respondent's Arecibo branch, although the Union has requested and is requesting it to do so. On June 5, 1967, the Respondent filed its answer, denying the commission of the unfair labor practices alleged, and presenting an affirmative defense to the allegations.

On June 13, 1967, the General Counsel filed with the Board a motion to strike portions of the Respondent's answer and for summary judgment, submitting, in effect, that the Respondent's answer, including its affirmative defense, raised no issues which have not been previously litigated in the prior representation case (Case No. 24-RC-2882) and, therefore, that an order should be issued striking certain portions of the Respondent's answer, namely, its affirmative defense, finding all allegations of the complaint to be true, and granting his motion for summary judgment. The General Counsel further moved that prior to, and without the necessity of a hearing, the Board issue a decision against the Respondent containing findings of fact and conclusions of law in accordance with the allegations of the complaint, and an order remedying the unfair labor practices so found. Thereafter, on June 19, 1967, the Board issued an order transferring the proceeding to the Board and a notice to show cause, on or before July 3, 1967, why the General Counsel's motion to strike portions of Respondent's answer and for summary judgment should not be granted. On July 12, 1967, the Respondent filed an opposition to General Counsel's motion to strike portions of Respondent's answer and for summary judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board makes the following:

Ruling on the Motion to Strike Portions of Respondent's Answer and for Summary Judgment

In its opposition to the General Counsel's motion to strike portions of Respondent's answer and for summary judgment, the Respondent contends, in substance, that it is entitled to have a hearing before a Trial Examiner with respect to (1) allegations of the complaint pertaining to its refusal to bargain, which, it is stated, are based in part on non-authenticated documents and thus are legally insufficient to support a motion for summary judgment, and (2) its affirmative defenses that the unit is inappropriate and that its objections to the election should either have been sustained or resolved after a hearing. We find these contentions to be without merit. As to (1), we are satisfied that the allegations of the complaint with respect to the Respondent's refusal to bargain are amply supported,[2] and

[2] The Respondent contended with respect to the written documents submitted by the General Counsel in support of the complaint: (1) that a photostatic copy of a letter from the Respondent Employer to the editor of the San Juan Star newspaper dated February 10, 1967, and appearing on page 10 of that newspaper on February 21, 1967, had not been authenticated by the General Counsel; (2) that a photostatic copy of an English translation of a letter from the Respondent Employer to the Union dated March 31, 1967, had likewise not been authenticated; and (3) that a letter from the Respondent Employer to the Union dated April 21, 1967, though admittedly signed by the Respondent's Assistant Executive Vice-President, did not constitute a refusal to bargain.

We note that the Respondent's technical objections regarding authentication of two documents are not accompanied by any claim that the documents are incorrect. In any event, the Respondent's refusal to bargain is fully established by the following documents, which have not been challenged by the Respondent: (1) the Union's letter of April 5, 1967, in response to the Respondent's aforesaid letter of March 31, 1967, stating, in pertinent part, that "I acknowledge receipt of your letter dated March 31, 1967, refusing to negotiate the collective-bargaining agreement for the Bank's branch in Arecibo [P.R.], alleging that the unit that the Board certified is not appropriate for the purposes of collective

as to (2), the Respondent's affirmative defenses are merely attempts to relitigate matters decided by the Board in the prior representation proceeding.

The record before us establishes that pursuant to the Board's Decision and Direction of Election dated September 30, 1966,[3] a secret-ballot election was conducted among the employees at the Respondent's Arecibo Bank branch, under the supervision of the Regional Director for Region 24, on October 27, 1966, in which, of approximately 24 eligible voters, 23 cast valid ballots, of which 19 were for the Union herein, none for the Union De Empleados De Oficinas De Bancos y Financieras, Afiliada A Office and Professional Employees International Union, AFL-CIO, 4 against the participating labor organizations, with 1 challenged ballot. The challenged ballot was not determinative of the election results. Thereafter, on November 4, 1966, the Employer filed timely objections to conduct affecting the results of the election. After an administrative investigation, the Regional Director, on February 1, 1967, issued a Supplemental Decision and Certification of Representative, in which he recommended that the Employer's objections be overruled in their entirety, and thereupon issued a Certification of Representative to the Union herein as exclusive bargaining representative of the Employer's employees. The Employer's request for review of the Regional Director's decision was denied by the Board on March 15, 1967.

On March 15 and 28, and April 5, 1967, the Union addressed letters to the Respondent requesting negotiations

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bargaining," and (2) the Respondent's aforesaid letter to the Union dated April 21, 1967, in answer to the Union's April 5 letter, stating that "Due to the nature of our operations, no branch of this bank can be considered as a nucleus separated from the whole. The employees of the Arecibo Branch constitute solely one fraction of the organism of the institution taken as a whole. It is for this reason that we have been forced to take *the position you already know* regarding said branch."

[3] 160 NLRB No. 119.

for a contract to cover the Respondent's employees at its Arecibo Branch bank. In response to these requests the Respondent, by letters dated March 31 and April 21, 1967, advised that it would not negotiate with the Union because it considered the Board's unit determination to be erroneous.[4]

We find no merit in the Respondent's contention that the requested unit was inappropriate. It is well-established that, in the absence of newly discovered or previously unavailable evidence, a respondent is not entitled to relitigate in a Section 8(a)(5) proceeding issues which were or could have been raised in a related representation proceeding.[5]

As all material issues have been previously decided by the Board, or stand admitted by the failure of the Respondent to properly controvert the averments of the General Counsel's motion, there are no matters requiring a hearing before a Trial Examiner. Accordingly, the General Counsel's motion to strike portions of Respondent's answer and for summary judgment is granted. On the basis of the record before it, the Board makes the following:

Findings of Fact

I. The Business of Respondent

The Respondent is, and has been at all times material herein, a corporation duly organized and existing under the banking laws of the Commonwealth of Puerto Rico, and is engaged in a commercial and general banking business on the Island of Puerto Rico, where it operates 29 banking establishments. During the past year, in the course and conduct of its banking operations in the Commonwealth of

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[4] The April 21 letter alone would sufficiently establish the Respondent's refusal to bargain in these circumstances. See footnote 2 above.

[5] *Pittsburgh Plate Glass Company* v. *N.L.R.B.*, 313 U.S. 146.

Puerto Rico, the Respondent received monies and credits valued in excess of $50,000, which were sent directly to its banking offices in Puerto Rico from points located outside the Commonwealth of Puerto Rico. During the same period, it furnished monies and credits and banking services valued in excess of $50,000 to persons and firms engaged in interstate commerce. Its gross annual income from its banking business is in excess of $50,000.

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.[6]

II. The Labor Organization Involved

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The representation proceeding

1. *The unit*

At all times material herein, the following employees of the Respondent have constituted a unit appropriate for collective bargaining within the meaning of the Act:

> All employees employed by the Employer at Arecibo, Puerto Rico, including accountants, secretary to manager, paying and receiving tellers, loan interviewers, bookkeeping machine operators, senior utility clerks, senior accounting clerks, current accounts clerks, senior collection clerks, collectors, janitors, accounting clerks, executive secretary, senior current accounts clerks,

[6] We note that the Board asserted jurisdiction over the Respondent in the related representation proceeding. See *Banco Credito Y Ahorro Ponceno*, 160 NLRB No. 119.

proof machine operators, and exchange clerks, but excluding executive, professional personnel, managers, submanagers, guards, and supervisors as defined in the Act.

2. *The certification*

On October 27, 1966, a majority of the employees of the Respondent in said unit, in a secret election conducted under the supervision of the Regional Director for Region 24, designated the Union as their representative for the purpose of collectve bargaining with the Respondent. On February 1, 1967, the Regional Director for Region 24 certified the Union as the collective-bargaining representative of the employees in said unit. The Board denied Respondent's request for review of the certification, and the Union continues to be such representative.

B. The request to bargain and the Respondent's refusal

Commencing on or about March 15, 1967, and continuing to date, the Union has requested and is requesting the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Since on or about March 31, 1967, and continuing to date, the Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive collective-bargaining representative of all the employees in said unit.

We find that the Union has been at all times since February 1, 1967, and now is the exclusive bargaining representative of all the employees in the above-described unit, within the meaning of Section 9(a) of the Act. We further find that the Respondent has, since on or about March 31, 1967, refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the appropriate unit, and that, by such refusal, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The acts of the Respondent set forth in Section III, above, occurring in connection with its operations as described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

VI. Conclusions of Law

1. Banco Credito y Ahorro Ponceno is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by the Employer at Arecibo, Puerto Rico, including accountants, secretary to manager, paying and receiving tellers, loan interviewers, bookkeeping machine operators, senior utility clerks, senior accounting clerks, current accounts clerks, senior collection clerks, collectors, janitors, accounting clerks, executive secretary, senior current accounts clerks, proof machine operators, and exchange clerks, but excluding executive, professional per-

sonnel, managers, submanagers, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 1, 1967, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 31, 1967, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Banco Credito y Ahorro Ponceno, Arecibo, Pureto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of

employment, with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees employed by the Employer at Arecibo, Puerto Rico, including accountants, secretary to manager, paying and receiving tellers, loan interviewers, bookkeeping machine operators, senior utility clerks, senior accounting clerks, current accounts clerks, senior collection clerks, collectors, janitors, accounting clerks, executive secretary, senior current accounts clerks, proof machine operators, and exchange clerks, but excluding executive, professional personnel, managers, submanagers, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Arecibo, Puerto Rico, place of business, copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 24, shall, after being duly signed by the Re-

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order," the words "a Decree of the United States Court of Appeals, Enforcing an Order."

spondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director for Region 24, in writing, within 10 days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., Sep 12 1967

.....
Gerald A. Brown, Member

.....
Howard Jenkins, Jr., Member

.....
Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not refuse to bargain collectively with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

We Will, upon request, bargain with the above-named Union as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All employees employed by the Employer at Arecibo, Puerto Rico, including accountants, secretary to manager, paying and receiving tellers, loan interviewers, bookkeeping machine operators, senior utility clerks, senior accounting clerks, current accounts clerks, senior collection clerks, collectors, janitors, accounting clerks, executive secretary, senior current accounts clerks, proof machine operators,

and exchange clerks, but exeluding executive, professional personnel, managers, submanagers, guards, and supervisors as defined in the Act.

BANCO CREDITO Y AHORRO PONCENO
(Employer)

Dated .....By.....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 7th Floor, El Hato Rey Building, 255 Ponce de Leon Avenue, Hato Rey Pr. 00919 (Tel. No. 765-1125), if they have any questions concerning this notice or compliance with its provision.

APPENDIX "C"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 24-RC-2858

BANCO CREDITO Y AHORRO PONCENO, *Employer*

and

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, DISTRICT LODGE 3 OF PUERTO RICO, AFL-CIO[1], *Petitioner*

Cases Nos. 24-RC-2881, 24-RC-2882

BANCO CREDITO Y AHORRO PONCENO, *Employer*

and

UNION DE EMPLEADOS DE OFICINAS DE BANCOS Y FINANCIERAS, AFILIADA A OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO, *Petitioner*

Decision and Direction of Elections

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held in these consolidated cases before Awilda M. Morales-Fortuno, Hearing Officer. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

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[1] Referred to herein as Boilermakers.

The Boilermakers requested oral argument, but the motion did not satisfy the requirements of Section 102.65(a) of the Board's Rules and Regulations, Series 8, as amended. In any event, the record and briefs adequately present the issues and positions of the parties.

Upon the entire record in these cases, including the briefs filed by the parties, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.[2]

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The appropriate unit:

A. The Scope of the Units

The Employer is a Puerto Rico corporation engaged in the commercial and general banking business, with 31 branch offices located in different cities throughout the island of Puerto Rico including a branch on the neighboring Island of Vieques, and a Bond Department in New York City, New York. The Petitioner, UEOB, in Cases Nos. 24-RC-2881 and 2882 seeks two single branch office units at Yauco and Arecibo. In Case No. 24-RC-2858, the Boiler-

[2] Office and Professional Employees International Union, AFL-CIO, herein called Office Employees, was permitted to intervene in Case No. 24-RC-2858, and Boilermakers was permitted to intervene in Cases Nos. 24-RC-2881 and 2882, based on their respective showings of interest.

The Employer moved to dismiss the petitions in Cases Nos. 24-RC-2881 and 2882, contending that the Petitioner, Union de Empleados de Oficinas de Bancos Y Financieras, afiliada a Office and Professional Employees International Union, AFL-CIO, herein called UEOB, is not a labor organization within the meaning of Section 2(5) of the Act. We are satisfied on the instant record that the UEOB, an affiliate of the Office Employees, is a labor organization within the meaning of the Act. Accordingly, we hereby deny the Employer's motion.

makers petitioned for a unit of 13 of the Employer's branch offices located in the San Juan metropolitan area which are designated San Juan, Stop 17, Loiza, Martin Pena Puerto Nuevo, Reparto Metropolitano, Hyde Park, Hato Rey, Rio Piedras, Aeropuerto Internacional, 65th Infantry, Bayamon, and Santa Rosa. The Employer contends that the only appropriate unit should include all 31 of its banking offices in Puerto Rico and the Bond Department in New York, since the bank functions as a highly integrated and centralized organization. There is no recent history of collective bargaining for any of the Bank's employees,[3] and no labor organization is seeking the Employer's overall operation.[4]

The Employer's policies pertaining to operations, administration, and labor relations for all of its branch offices are formulated centrally by top management. The Employer's Finance, Personnel, and Publicity Departments are housed in its main office in San Juan; general record keeping, electronic data processing, and the consumer loans department are located in the centralized Stop 17 office;[5] and the Comptroller's Office, including Accounting and Reports, Bookkeeping, Purchases, and Disbursements, is

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[3] We have taken official notice of the fact that in 1944 a labor organization not involved herein won representation rights in a single branch office unit pursuant to a consent election. However, we have no evidence regarding the duration of the bargaining history. In addition, the record indicates that in 1962, in Case No. 24-RC-1927, the Employer and two labor organizations entered into a consent election agreement covering an island-wide unit, but neither union was selected by the employees.

[4] Office Employees initially contended for an island-wide unit, but subsequently changed its unit position to conform with that of the UEOB which, as noted, petitioned for two single branch office units.

[5] The name *Stop 17* refers to a bus stop on Ponce de Leon Avenue in Santurce which is a part of the San Juan metropolitan area.

presently located in Ponce, a distance of approximately 70 miles from San Juan.[6] Centralized supervision is accomplished by the administrative subdivision of the island into three territories, with area supervisors reporting through the General Supervisor of branch offices to the Assistant Executive Vice President.[7]

Apart from the foregoing, each branch office functions autonomously. In their day-to-day operations branch managers are clothed with substantial authority in the local application of uniform personnel policies. They generally make effective recommendations with respect to the hire, fire and discipline of branch employees; authorize overtime work; and schedule vacations to suit the needs of the branch and the desires of the employees. In addition, employees look to immediate branch supervision for resolution of grievances as well as explanation and application of company policy.

Further, there are marked differences among the individual branch offices, which represent the Bank's primary business unit in a particular community. Thus, in establishing branches, primary consideration is given to the economic needs of the locality, and every effort is made to have the branch reflect an image of the community, i.e. by providing employment for its residents and observing local holy days. With the exception of the San Juan metropolitan area, transfers of employees between branches are

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[6] The Employer has plans to remove the Comptroller's Office from its Office in Ponce to its administrative headquarters in San Juan.

[7] Such centralization is required in order to ascertain the Bank's daily cash position inasmuch as the loan capacity of each branch office is affected by the Bank's overall margin requirements. Accordingly, branch managers have authority to approve commercial and personal loans only up to specific maximum amounts.

minimal.[8] The distances between branches may, of course, vary, but some are as far as 100 miles apart, and even though the average distance between some offices outside of the San Juan metropolitan area is not great, inadequate roads render many such offices remote from one another.

In view of the foregoing, we find that the Employer's branch offices outside of the San Juan metropolitan area function as distinct entities, and that they therefore constitute separate appropriate units. Accordingly, we find that each of the Employer's branch offices in Yauco and Arecibo is separately appropriate for purposes of collective bargaining.

Further, in view of the presence of common working conditions, the high degree of interchange within the metropolitan area, and the absence of substantial interchange with employees or offices outside of the area, we find that the Employer's 13 offices in the San Juan metropolitan area constitute a clearly defined, geographically coherent grouping sufficiently inclusive and compact to make collective bargaining in a single unit feasible.[9] Accordingly, we shall

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[8] Of 206 transfers occurring between January 1, 1964 and the time of hearing herein, in April and May 1966, 118 were within the San Juan metropolitan area, 44 were between branches in Ponce, 29 involved transfers between San Juan and other offices throughout the island, and 15 were between branches adjacent to Ponce and those located in Ponce.

[9] See *Metropolitan Life Insurance Company (Woonsocket, R.I.)*, 156 NLRB No. 113, at p. 9.

The Employer contends that the requested units are inappropriate and the only basis for finding them appropriate would be to give controlling weight to the extent of organization by the respective Unions, which is contrary to the mandate of Section 9(c)(5) of the Act. However, as the single office units at Yauco and Arecibo, and the San Juan metropolitan area unit are appropriate under traditional community of interests criteria, the fact that we have given effect to the Unions' requests does not show that our decision is controlled by the extent of their organization.

direct an election among the employees at the Employer's 13 offices comprising the San Juan metropolitan area with the inclusions and exclusions discussed below.

B. Composition of Units

Cases Nos. 24-RC-2881; 2882

The parties did not stipulate as to the composition of the Yauco and Arecibo units. Nor did the Employer or Intervenor dispute the unit placement of the classifications sought by the Petitioner. In both cases, the Petitioner requested a unit comprised of "all employees of the Employer [at its respective branch offices in Yauco and Arecibo, Puerto Rico], excluding executive and professional personnel, managers, submanagers, accountants, secretary to the manager, guards and supervisors as defined in the Act." However, as there is no evidence that the Employer employs professional accountants in its branch offices, we shall include accountants, subject to challenge in the election, in the respective units. And since the record shows[10] that the secretaries to branch managers do not perform duties or have access to matters of a confidential nature, we shall include this classification within the units.

Accordingly, in the absence of a dispute, or evidence showing that the composition of the units requested by the Petitioner is otherwise improper, we shall direct separate elections among the employees in the units as hereinafter described.

[10] See our discussion and findings concerning the *Executive Secretary* and *Secretary* classifications in the San Juan unit, *infra*.

Case No. 24-RC-2858

The parties have stipulated to the inclusion of 52 classifications[11] in the San Juan metropolitan branches. The parties also agree as to the exclusion of executive and professional personnel, managers, submanagers, secretaries to the following persons: President, Executive Vice President, Assistant Executive Vice President, Secretary to the Board of Directors, Vice President of Personnel,[12] Comptroller, Auditor, Vice President and Assistant Vice President in charge of branch supervision, Vice President of Administration,[13] guards and supervisors as defined in the Act. Accordingly, there is a dispute as to the unit placement of 26 categories.

[11] The included classifications are: Janitor, Messenger, File Clerk, Janitor-Messenger, Mail Clerk, Addressograph Operator, Chauffeur, Clerk Typist, Key-Punch Operator, Paying and Receiving Teller (Trainee), Returned-Checks Clerk, Stock Room Helper, Payroll Clerk, Branch Clerk, Clearance Clerk, Clerk Stenographer, Collections Clerk, Currency Clerk, Current Accounts Clerk, Exchange Clerk, Mail Clerk (Senior), Proof and Transit Clerk, Savings Teller, Senior Clerk-Typist, Signature Clerk, Telephone Operator, Accounting Clerk, Accounting Clerk (FHA), Bookkeeping Machine Operator, Credit Information Clerk, Insurance and Tax Clerk, Loan Interviewer, Loan Investigation Clerk, Maintenance Man, Proof Machine Operator, Registration and Insurance Clerk, Tabulating Machine Operator, Utility Clerk, Credit Investigator, Letter of Credit Clerk, Paying and Receiving Teller, Receptionist, Senior Accounting Clerk, Senior Collections Clerk, Senior Current Accounts Clerk, Senior Proof and Transit Clerk, Head Teller, Senior Branch Clerk, Senior Department Clerk, Senior Loan Interviewer (FHA), Senior Utility Clerk, Assistant Methods and Procedures Analyst.

The Parties apparently agreed that the category of Mail Clerk (Consumer Loan) be included but stipulated that the position was vacant at the time of the hearing.

[12] The Employer originally sought to include this classification, but in its brief agreed to its exclusion as a confidential employee.

[13] See footnote 12, *supra*.

The Petitioner and Intervenor contend for the exclusion of, and the Employer would include, the following 17 employee classifications from the appropriate unit.

Employees in the classifications *Office Loan Adjustor, Senior Loan Adjustor,* and *Field Loan Adjustor* all work in the Consumer Loans Department at the Stop 17 office under the Operations Supervisor. The Office Loan Adjustors contact debtors by telephone, or in person in the Bank, to discuss repayment of delinquent loans. They have no authority to adjust the repayment of loans but merely report their conversations to the supervisor, who then decides upon an appropriate course of action. The designation Senior Loan Adjustor is given to a more experienced employee who performs similar duties, and the parties agree that his unit placement should be the same as that of the Office Loan Adjustors. There are eight Field Loan Adjustors who report to the office each morning, visit debtors and co-signers in an effort to collect outstanding loans in arrears, and return in the afternoon to turn in moneys collected and report on unsuccessful efforts. They receive a higher salary plus an allowance for using their own automobiles while in the field. As these adjustors have no supervisory authority and exercise no discretion, and they all perform duties similar to one another and to employees whose inclusion the parties stipulated, we shall include the three categories of Loan Adjustors in the unit.

Collectors perform a function similar to that of the Field Loan Adjustors except that they collect payments of drafts and other negotiable instruments on behalf of the Bank's clients rather than debts owed to the Bank. They work out of centralized offices or branches and under common supervision with other included classifications. Their daily schedules and working conditions closely resemble those of the Field Loan Adjustors. We shall therefore include all Collectors based in the San Juan metropolitan area in the unit.

The Bank employs approximately 41 *Executive Secretaries* and 39 *Secretaries,* many of whom work in the San Juan metropolitan area performing general secretarial work for top management officials and junior officers, respectively. Inasmuch as the employees in these classifications, aside from those whose stipulated exclusion is set forth above, are assigned to junior officers, such as branch managers,[14] who do not formulate, determine, and effectuate management policies in the field of labor relations, we shall in accordance with established Board precedent,[15] include all such nonconfidential employees in the San Juan metropolitan area within the unit.

Resident Auditors are based in various of the Employer's branch and centralized offices. They review record entries made by other employees for accuracy, verify moneys in the possession of tellers, and check that all work is done according to the Bank's *Manual of Operations.* Their job requires no special professional training and they have no authority to discipline other employees for faulty work, but merely report any errors or deficiencies to the Auditor. The major portion of their work is performed in close proximity to unit employees with whom they share common hours and working conditions. In view of the foregoing, we shall include those Resident Auditors situated in the San Juan area within the unit.

The *Field Auditors* make surprise audits of the records in all offices throughout the island periodically. Their audits cover a longer period of time, and their schedules and findings are by nature highly confidential matters. Because of the character of their work, we find that their

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[14] The record shows that the branch managers communicate personnel and labor relations problems directly to the Vice President of Personnel or his assistant in person or by telephone, and that in no event would the secretary to the manager become involved until after such disciplinary or other action is taken.

[15] See *The B. F. Goodrich Company,* 115 NLRB 722, 724-25.

interests are more closely related to management, thus differing substantially from all other unit employees, and we shall exclude this classification from the unit.

The *Property Coordinator* and the *Insurance Coordinator* work in the same office in the Stop 17 location. However, both are required to travel extensively throughout the island, and are provided with automobile as well as room and board allowances therefor. The Property Coordinator acts as a liaison between central management and branch managers with respect to the maintenance and repair of physical facilities, and assigns such work to maintenance personnel. The Insurance Coordinator handles and keeps all insurance policies and records relating to Bank property, and processes insurance claims thereon. He inspects property requiring insurance and checks out damaged property on which insurance claims may be filed. As the work of both employees requires substantial travel throughout the island, we find that they do not share a sufficient community of interests with employees in San Juan, and we shall exclude them from the unit.

The *Public Relations Assistant, Public Relations Representative,* and *Business Development Representative* perform a related function, that of promoting good will among the customers or prospective customers of the Bank. The Public Relations Assistant is not situated and does not operate in the San Juan area. The Public Relations Representative helps in arranging details of Bank-sponsored social activities anywhere in the island. The Business Development Representative promotes good relations in communities designated for future branch offices. As these employees' duties are dissimilar from those of unit employees and as the scope of their employment extends to all parts of the island, we shall exclude them from the unit.

The Cost and Accounting System Analyst works in the Comptrollers' office in Ponce. His job involves stream-

lining accounting and cost systems and related clerical operations. He does not possess supervisory authority or have employees assigned to him. The record indicates that the Employer contemplates that this employee will be moved from Ponce to the San Juan metropolitan area. We shall include this Analyst in the unit, if the transfer of his place of work to the San Juan area has been accomplished by the eligibility date.

The *Methods and Procedures Analyst* works in the San Juan centralized office along with the Assistant Methods and Procedures Analyst, whose inclusion in the unit was stipulated by the parties. He coordinates studies for work simplification and standardization of general clerical and office operations. Although he performs essentially the same duties as the Assistant, the disputed Analyst, as the "senior" employee, is assigned the more difficult work and he drafts the new procedures for inclusion in the Bank's *Manual of Operations*. He has no supervisory authority over other employees. In view of the foregoing, we shall include this classification in the unit.

The employees designated *Assistant to the Area Supervisor* primarily aid in follow-up of credit applications from branches, and in consolidation of financial reports in order to ascertain the Bank's daily loan position. The have no employees working under their direction, and they exercise no supervisory authority. Accordingly, we shall include in the San Juan unit the employee in this classification who is assigned to the administrative territory which encompasses the San Juan metropolitan area.

There are 14 nonclassified employees designated *Trainees* who are undergoing a formalized training program, learning while performing various jobs throughout the branches and centralized departments of the Bank. During this training period of approximately 1½ years, these employees punch timecards and are eligible for overtime work. Those selected to participate must have either a college education,

prior banking experience, or a number of courses completed or undertaken in the American Institute of Banking. Although candidates occasionally drop out of the training program or accept nonmanagerial positions prior to its completion, clearly the purpose of the program is to prepare trainees for management jobs. Therefore, we find that the employees herein are management trainees, and in accordance with established Board precedent, we shall exclude them from the unit.[16]

The Employer and the Intervenor would include, and the Petitioner would exclude, the following 9 categories of employees.

The classifications *Accounting Clerk (Comptroller's Office)* and *Senior Accounting Clerk (Comptroller's Office)* include a separate group of employees located in the Comptroller's office in Ponce. However, at the time of the hearing herein their transfer to San Juan was imminent. The Accounting Clerks prepare and maintain simple accounting records and reports. The Senior Accounting Clerks perform more complex accounting work, including consolidation and reconciliation of accounts, property taxes, and preparation of reports for such government agencies as the Federal Deposit Insurance Corporation. In the absence of evidence that either category includes professional or supervisory personnel and as the parties agreed to include other employees similarly classified within the San Juan offices we shall include both groups if their removal from Ponce to San Juan has been accomplished by the eligibility date.

Employees in the classifications of *Loan Officer* and *Assistant Loan Officer* analyze, evaluate, approve or disapprove consumer loans up to authorized dollar limita-

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[16] *Montgomery Ward and Company*, 131 NLRB 1436. Moreover, as these employees move from office to office in and out of the San Juan area, we further find that they lack sufficient interests with unit employees to warrant their inclusion herein.

tions. There is no supervisory relationship between these two categories of employees, the only apparent difference between them being the *Loan Officer's* authority to approve loans in greater amounts. Both employees are restricted to objective analysis of consumer loan applications, and neither exercises discretion. They have no specialized training. As they perform work of routine nature, and do not exercise any supervisory authority, we shall include them in the unit.

There are four employees with the title *Credit Analyst* working in the San Juan centralized office. They prepare credit applications, analyze the credit standing, and evaluate financial statements of the applicant for employees who will further process the application. They make no recommendations, perform work of a routine nature, and enjoy working conditions similar to other unit employees. We shall therefore include them in the unit.

The *Securities Analysis Clerk* is located in the San Juan centralized office. She analyzes information received from branches relating to government deposits, correspondence, bank balances, and stock market data. She has no supervisory authority, and her working conditions and work duties are similar to those of other unit employees. Accordingly we shall include her in the unit.

The classification *Assistant Maintenance Man* in the San Juan metropolitan area was vacant at the time of the hearing. However, as there is no real dispute regarding the propriety of including this classification in the unit, we shall include it and, in the event that the vacancy in San Juan is filled, we shall permit the incumbent to vote.

There are two *Personnel Clerks* and five *Senior Personnel Clerks* who work in the Personnel Department at the San Juan office. One of the two Personnel Clerks does clerical work related to fringe benefits, and the other processes and files employee hospitalization claims. Likewise, each of the Senior Personnel Clerks performs a different

function; such as processing application forms and administering admission tests; explaining fringe benefits to new employees and assisting in fillling out personnel forms; maintaining records of transfers, promotions, and vacations; checking on employee eligibility for fringe benefits; and maintaining a list of the Bank's authorized signers on a day-to-day basis. The main difference between the two categories is that the Senior Clerks are more experienced and are therefore higher rated. None of the above employees has supervisory authority or access to confidential information regarding personnel and labor relations policy before it is communicated to other unit employees. They share common working conditions with one another and with other unit employees. We shall therefore include both of these classifications.

In view of the above, we find that the following constitute units appropriate for collective bargaining within the meaning of Section 9(c) of the Act.

1. All employees employed by the Employer at Yauco, Puerto Rico,[17] including accountants and the secretary to the manager, but excluding executive and professional personnel, managers, submanagers, guards, and supervisors as defined in the Act.

2. All employees employed by the Employer at Arecibo, Puerto Rico,[18] including accountants and the secretary to the manager, but excluding executive and professional personnel, managers, submanagers, guards, and supervisors as defined in the Act.

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[17] As noted above, there is no evidence of disagreement as to the unit placement of any specific classifications herein. However, to the extent that the same classifications which were litigated or stipulated in the San Juan branches are present, their unit placement shall conform to our San Juan unit findings.

[18] See footnote 17, *supra*.

3. All employees, including those classifications listed in the Appendix attached hereto,[19] employed by the Employer at its establishments located in the San Juan metropolitan area, including the offices designated San Juan, Stop 17, Loiza, Martin Pena, Puerto Nuevo, Reparto Metropolitano, Hyde Park, Hato Rey, Rio Piedras, Aeropuerto Internacional, 65th Infantry, Bayamon, and Santa Rosa, but excluding all other employees,[20] all executive and professional personnel, managers, submanagers, authorized signers, guards, and supervisors as defined in the Act.

Direction of Elections

Subject to a proper showing of interest, elections by secret ballot shall be conducted among the employees in the units found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 24 shall direct and supervise the elec-

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[19] The unit found appropriate is larger than that originally sought by the Petitioner, and neither the exact size of the unit nor the precise interest of the Petitioner in the unit is clear from the record. Accordingly, the Regional Director is instructed not to proceed with the election herein until he shall have first determined that the Petitioner has an adequate showing of interest among the employees in the appropriate unit. *Foremost Dairies, Inc.*, 118 NLRB 1424, 1428. We shall also permit the Petitioner to withdraw its petition without prejudice upon notice to the Regional Director within 10 days from the date of issuance of this Direction.

[20] The lists of classifications of employees in the Appendix under "included," and under "allowed to vote if located in the San Juan metropolitan area" constitute a comprehensive and all-inclusive list of inclusions. The list of classifications of employees under "excluded" covers only those classifications which the parties stipulated should be excluded, and those which were in dispute and which the Board has decided to exclude. It does not contain a listing of other employees whose exclusion was not disputed, but whose status as either guards, professional employees, confidential employees, managerial employees, or supervisors, was not litigated. These employees are excluded from the unit by operation of the phrase "all other employees."

tions, subject to the National Labor Relations Board Rules and Regulations, Series 8, as amended. Eligible to vote are those in the units who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also egigible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[21] Those eligible in the Yauco and Arecibo units shall vote whether they desire to be represented for collective-bargaining purposes by Union de Empleados de Oficinas de Bancos y Financieras, afiliada a Office and Professional Employees International Union, AFL-CIO; by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths,

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[21] Election eligibility lists, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 24 within 7 days after the date of this Decision and Direction of Elections. These lists may initially be used by the Regional Director to assist in determining adequate showings of interest. The Regional Director shall make these lists available to all parties to an election when he shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. No extension of time to file these lists shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB No. 111.

Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO; or by neither. Those eligible in the San Juan metropolitan area unit shall vote whether they desire to be represented for collective-bargaining purposes by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3 of Puerto Rico, AFL-CIO; by Office and Professional Employees International Union, AFL-CIO; or by neither.

Dated, Washington, D. C., Sept. 30, 1966.

JOHN H. FANNING, *Member*
GERALD A. BROWN, *Member*
SAM ZAGORIA, *Member*

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

Included

Janitor
Janitor-Messenger
Messenger
Chauffeur
Mail Clerk
File Clerk
Addressograph Operator
Key-punch Operator
Stock-room Helper
Paying and Receiving Teller (Trainee)
Returned-Checks Clerk
Payroll Clerk
Branch Clerk
Clearance Clerk
Clerk Stenographer
Collections Clerk
Currency Clerk
Current-Accounts Clerk
Exchange Clerk
Mail Clerk (Senior)
Proof and Transit Clerk
Savings Teller
Senior Clerk-Typist
Signature Clerk
Bookkeeping Machine Operator
Credit Information Clerk
Senior Branch Clerk
Senior Department Clerk
Senior Loan Interviewer (FHA)
Senior Utility Clerk
Assistant Methods and Procedures Analyst
Office Loan Adjustor
Senior Loan Adjustor
Field Loan Adjustor
Collector
Secretary
Executive Secretary
Secretary to Branch Manager
Resident Auditor
Methods and Procedures Analyst
Assistant to the Area Supervisor
Loan Officer
Assistant Loan Officer
Insurance and Tax Clerk
Loan Investigation Clerk
Maintenance Man
Proof Machine Operator
Registration and Insurance Clerk
Tabulating Machine Operator
Utility Clerk
Credit Investigator
Letter of Credit Clerk
Paying and Receiving Teller
Receptionist
Senior Accounting Clerk
Senior Current Accounts Clerk
Head Teller
Loan Interviewer
Senior Collections Clerk

Senior Proof and Transit Clerk
Telephone Operator
Accounting Clerk
Accounting Clerk (FHA)
Assistant Maintenance Man
Mail Clerk (Consumer Loan)
Credit Analyst
Securities Analysis Clerk
Personnel Clerk
Senior Personnel Clerk

Excluded

Secretaries to:

President
Executive Vice President
Assistant Executive Vice President
Secretary to Board of Directors
Vice President of Personnel
Comptroller
Auditor
Vice President of Branch Supervision
Assistant Vice President of Branch Supervision
Vice President of Administration
Assistant Vice President of Personnel

Allowed to vote if located in San Juan metropolitan area

Accounting Clerk (Comptroller's Office)
Senior Accounting Clerk (Comptroller's Office)
Cost and Accounting Systems Analyst
Field Auditor
Property Coordinator
Insurance Coordinator
Public Relations Assistant
Public Relations Representative
Business Development Representative
Trainees

Allowed to Vote if Located in San Juan Metropolitan Area

Accounting Clerk (Comptroller's Office)
Senior Accounting Clerk (Comptroller's Office)
Cost and Accounting System Analyst

APPENDIX "D"

Section 9, National Labor Relations Act, 29 U.S.C. § 159.

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit

is appropriate for such purpose if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) (1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a); the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an

election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts

certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside, in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) (1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."

SUPREME COURT, U. S.

FILED

JUL 1 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 167

BANCO CREDITO Y AHORRO PONCENO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY TO THE MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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IN THE

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OCTOBER TERM, 1967

No. 1505

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NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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REPLY TO THE MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

On June 19, 1968 the Solicitor General filed a Memorandum for the National Labor Relations Board in Opposition to the petition for certiorari. The opposition was not addressed to the merits of the petition, but was directed solely to the fact that the petition had been filed a single day after the ninety days provided for in 28 U.S.C. § 2101.

The sole reason why the petition was filed on June 6, 1968 rather than June 5, 1968 was that, despite the most careful checking and rechecking, counsel for petitioner made an inadvertent error in computation of the ninetieth day after the entry of the decree in this case. Section 2101(c) authorizes extensions of time to be granted by a single Justice "for good cause shown" for up to sixty days. The statute does not prescribe that applications for extension of time must be filed before the ninetieth day. The Memorandum in Opposition notes that "no timely extension of time was sought . . ." (p. 1). In a situation such as here, where it was believed, based on an inadvertent error in computing the time, that the petition was being timely filed, there was, of course, no occasion or opportunity for filing an application for extension of time before the due date.

This question is not jurisdictional. Nothing in Section 2101(c) precludes the Court from granting, *nunc pro tunc,* an extension of one day's time for filing a petition for certiorari where the due date was not met because of an inadvertent error in computation.

The governing statute authorizes the Court to extend the time for filing for sixty days beyond the original ninety-day period. The statute reads in pertinent part, as follows:

> "Any other appeals or any writs of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

Since the statute authorizes extensions of time beyond the original ninety days, it appears plain that the ninety-day provision is not jurisdictional. Nor does the statute require that a request for time extension be filed within the original ninety-day period. On the contrary, the general and unrestricted authority to grant a time extension strongly suggests that the Court may in its discretion and for "good cause" shown extend the period either before or after the expiration of the original period.

The Court rules do provide that requests for time extensions should be made at least ten days before the end of the original filing period but permits their consideration even if made during the last ten days. But, this is not statutory and is subject to reasonable interpretation to prevent manifest injustice. Where as here, it was believed in good faith that the petition was being filed within the original ninety-day period, this provision of the rule can have no practical application.

The statutory power to enlarge the filing time should, in order to prevent manifest injustice, be construed to authorize in the Court's discretion a one day extension of time granted on a *nunc pro tunc* basis where there is no claim or showing of prejudice to the respondent. The same "considerations of liberality and leniency" which moved this Court in *Union National Bank of Wichita, Kansas* v. *Lamb,* 337 U.S. 38, to permit the filing of an appeal on the ninety-first day after the judgment of the Supreme Court of Missouri (since the ninetieth day fell on a Sunday) show that the question is not jurisdictional and should move the Court to consider the present petition on its merits. The *Lamb* case itself indicates that this issue is not preempted by the

statute and that the Court does not consider itself as irrevocably bound to the literal time limitations specified in its rules as the Solicitor General's Memorandum appears to argue.

For the foregoing reasons the petitioner respectfully requests the Court to extend the time for filing petitioner's brief to June 6, 1968 and to direct respondent to respond to the petition on its merits.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1968

BANCO CREDITO Y AHORRO PONCENO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1505

BANCO CREDITO Y AHORRO PONCENO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

The decree of the court of appeals (which is set forth in the Appendix) was entered on March 7, 1968. The 90-day period for filing a petition for a writ of certiorari prescribed in 28 U.S.C. 2101(c) expired on June 5, 1968. No timely extension of time for petitioning was sought, and the petition was filed on June

6, 1968. The petition is untimely, the Court has no jurisdiction to entertain it, and it should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1968.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7001

BANCO CREDITO Y AHORRO PONCENO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

March 7, 1968

This cause came on to be heard upon petition to review and set aside, and cross-petition for enforcement of, an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the National Labor Relations Board of September 12, 1967, is hereby affirmed and enforced.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk

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